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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11270 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIBHAI MANGALDAS MISTRY

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR FOR M/S THAKKAR ASSOC. for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/02/2001

ORAL JUDGEMENT

#. This petition was admitted on 1.11.2000. Though more than three months were available to the disposal of the respondents, none has cared to file reply to the special civil application. The learned counsel for the respondents prayed for short adjournment to file reply to

the special civil application but in the facts of this case, I do not find any justification in this prayer and the same is rejected.

#. Challenge has been made by petitioner Jayantibhai Mangaldas Mistry, detenu, at present detained in Sabarmati Central Jail, Ahmedabad, under Article 226 of the constitution to the order dated 25.9.2000 of the District Magistrate, Bharuch, under which he was ordered to be detained as a `bootlegger'.

#. Manifold contentions have been raised by learned counsel for the petitioner challenging the propriety, correctness and legality of this order but as this petition deserves acceptance only on one ground, no need to refer to all those contentions, consider and record findings thereon in the larger interest of saving precious and valuable judicial time of the court.

#. This petition was admitted on 1.11.2000. Though more than three months were available to the disposal of the respondents, none has cared to file reply to the special civil application. The learned counsel for the respondents prayed for short adjournment to file reply to the special civil application but in the facts of this case, I do not find any justification in this prayer and the same is rejected. The factual averments made in the special civil application stand uncontroverted and it has to be taken to be correct.

#. The learned counsel for the petitioner urged that the last complaint registered against the petitioner was on 12.6.2000 and the order of detention has been made by detaining authority on 27.9.2000 and there is long unexplained delay of more than three months in passing of the order and only on this ground, the petitioner's detention in this case is wholly unjustified.

#. The learned counsel for the respondents has supported the order of the detaining authority impugned in this special civil application.

#. The factual averments made re.: delay of about three months in passing of the detention order from the last criminal complaint registered against the petitioner has not been controverted and it is to be taken to be an admitted fact. The respondents have not furnished any explanation for this delay in filing reply to the special civil application. Not only this, even the learned counsel for the respondents has failed to point out any

explanation for this delay in passing of the order of detention of the petitioner from the record of the case also. This delay in passing of the order of detention of the petitioner is fatal to this case and certainly his continued detention is wholly unjustified. It is a clear case of mechanical application of mind by detaining authority. From the facts of the case, I am constrained to observe that the detaining authority has no time to look into these maters and passing the orders of detention of citizens which can easily be termed as an order passed with total non application of mind. There is yet another possibility and that is that the detaining authority has in fact not considered each and every paper of the compilation placed for consideration and whatever the report has come from the lower officer, it is dittoed. Third possibility may be that deliberately lacunae are being left in the order of detention for the detenu so that he may get easy assail in the matter in the court and get himself released from the detention. In almost all the detention cases, there are lacunas after lacunas left out and the court is left with no option but to release the detenu. From the matters which have come before this court, it further transpires that these detention orders were passed by the detaining authority only for statistical data so that they may befool people. The authorities want to take credit that that much number of persons were ordered to be detained to maintain the law and order position or to curb antisocial activities. But in almost all the cases, serious lacunas are being left and as a result thereof, release order of the detenu is made by the court. It is a different matter that the detaining authority may satisfy people by saying that the court released the detenu. It is unfortunate that live telecast of the court proceedings is not there and the court has not its own media to let the people know how these authorities are befooling them and how they play fraud with this Act, but contrary to it, the authorities have their own media and further opportunity to directly come into contact with people to convey their message to them. Sometime, I feel that some officer from the Law Department should remain present in the court to watch the proceedings of the court and report each and every case to the Chief Secretary of the State of Gujarat so that at least that officer may know how these officers are befooling people and playing fraud with the Act. But it is difficult to keep busy one officer in the court. If the detention orders are passed only for the purpose of having a handsome statistical data though in all those matters deliberately lacunae are being left and as a result of which the detenu are to be set at liberty, this is

certainly an act to befool the people as well as fraud on the Act itself. On being put by the Court the Government advocate as well as other members of the Bar more particularly who are appearing in PASA matters informed that in more than 90% cases, the detention orders are being quashed and set aside by the court. This if what it is conveyed to the court is correct, then what the court feels and observed aforesaid to a substantial extent is correct.

#. In the result, this petition succeeds and the same is allowed and the order of detention of the petitioner dated 25.9.2000 is quashed and set aside. The petitioner - Jayantibhai Mangaldas Mistry, the detenu, at present at Sabarmati Central Jail, Ahmedabad, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. No order as to costs.

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(sunil)